

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 849 OF 2016

Smita Yashwant Shitole.

... Petitioner.

V/s.

Pravin Mohan Gadia.

... Respondent.

Mr. Rahul S. Kate for the Petitioner.

Coram : N.M. Jamdar, J.

Date : 13 June 2017.

Oral Order :-

The Petitioner has challenged the orders passed by the Civil Judge, Junior Division, Pimpri, Pune dated 8 August 2013 and the order passed by the District Court, Pune dated 11 November 2014. By these orders, relief of injunction sought by the Petitioner – Plaintiff has been refused by both the Courts.

2. The Petitioner filed a Regular Civil Suit inter-alia seeking a relief of injunction against the Respondent from disturbing his possession over the suit property. The Defendant filed written statement and also claimed that the Defendant has right over the suit

property and the Plaintiff be accordingly restrained. The learned Civil Judge by order dated 8 August 2013 observed that, prima-facie, case of both the Plaintiff and Respondent – Defendant could not be accepted and accordingly both were restrained from making any construction on the suit property. Both the Petitioner - Plaintiff and Respondent – Defendant filed misc. appeals in the District Court which were dismissed by the learned District Judge.

3. The learned Counsel for the Petitioner sought to contend that incorrect description of the suit property is given in the sale deed and the Respondent – Defendant has no rights.

4. The suit has been filed in the year 2013 and till date there is no injunction in favour of either the Petitioner or the Respondent. The learned Civil Judge has in fact observed that the Respondent – Defendant have no right to have possession more than 2.75 Ares and he has no legal right to seek injunction against the Plaintiff. Therefore, indirectly the learned Civil Judge has protected the Petitioner from any obstruction from the Respondent. This position has continued since the year 2013 without any untoward incident.

5. In view of this position, it would be appropriate that the same position is continued till the disposal of the suit and the parties

will not take any precipitative action against each other as already observed by the learned Civil Judge. Since both the parties have been restrained from carrying out any construction, which position does not enure to benefit of either of the parties, liberty to the Petitioner to request the learned Civil Judge to take up the suit for disposal expeditiously, subject to earlier commitments. Keeping all contentions of the parties on merits open, the Writ Petition is disposed of.

(N.M. Jamdar, J.)